



IT IS ORDERED as set forth below:

Date: January 21, 2014

**Barbara Ellis-Monro
U.S. Bankruptcy Court Judge**

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

IN RE:

BARRY RONALD SMITH, JR AND LEE
UMSTEAD SMITH,

Debtors.

BARRY RONALD SMITH, JR AND LEE
UMSTEAD SMITH,

Movants,

v.

THE BANK OF NEW YORK MELLON
TRUST COMPANY, NATIONAL
ASSOCIATION FKA THE BANK OF NEW
YORK TRUST COMPANY, N.A. AS
SUCCESSOR TO JP MORGAN CHASE
BANK, N.A. AS TRUSTEE FOR RFMSII
2006-HI2, IN C/O OCWEN LOAN
SERVICING, LLC,

CASE NO. 13-59867-BEM

CHAPTER 7

Contested Matter

Respondent.

ORDER

This case came before the Court on January 15, 2014, on Debtor's motion seeking determination of the secured status of the claim of the Respondent (the "Motion"). [Doc. No. 40] The Motion asserts that the Respondent holds a claim secured by a deed to secure debt on real property owned by the Debtors known generally as 2851 Fountainebleau Drive, Atlanta, GA 30360 (the "Property"); that Respondent's deed to secure debt is subordinate to another deed to secure debt; and that the value of the Property is less than the amount of debt secured by the first priority deed.

The Motion and notice of a hearing on it were properly served on the Respondent. Respondent did not file a response or appear at the hearing to oppose the motion.

The Motion seeks to void the junior security interest held by the Respondent pursuant to 11 U.S.C. §§ 506(a) and (d). The U.S. Court of Appeals for the Eleventh Circuit held in *In re McNeal*, 477 Fed.Appx. 562 (11th Cir. 2012), that the relief the Motion requests should be granted. Because *McNeal* concludes that *In re Folendore*, 862 F. 2d 1537 (11th Cir. 1989), is controlling precedent on this issue in this circuit, notwithstanding the Supreme Court's ruling in *Dewsnup v. Timm*, 502 U.S. 410 (1992), *McNeal* and *Folendore* provide a basis for the relief the Motion seeks and because the Respondent has not opposed the Motion, the Court will grant the Motion.

It is, therefore, hereby **ORDERED** as follows:

1. The Motion is granted as set forth herein.

2. The junior lien on the Property held by the Respondent is deemed void with respect to the interest of the Debtors in the Property and shall be extinguished automatically, without further court order, upon entry of the Chapter 7 discharge in this case.

3. In the event this case is dismissed, the lien of the Respondent shall not be affected by this Order in accordance with 11 U.S.C. § 349(b)(1)(C).

4. In the event this case is converted to a case under another Chapter of the Bankruptcy Code, the rights of the Respondent with regard to its lien shall be governed by the provisions of the Bankruptcy Code applicable in the converted case such that the lien of the Respondent shall not be affected by this Order.

END OF DOCUMENT

DISTRIBUTION LIST

Barry Ronald Smith , Jr.
Lee Umstead Smith
2851 Fontainebleau Drive
Atlanta, GA 30360

Tyler Sims
Clark & Washington, LLC
3300 Northeast Expressway
Building 3
Atlanta, GA 30341

The Bank of New York Mellon Trust
Company,N.A.
Gerald L. Hassell, CEO
400 South Hope Street
Los Angeles, CA 90071

The Bank of New York Mellon Trust
Company, N.A.
Gerald L. Hassell, CEO
One Wall Street
New York, NY 10286

The Bank of New York Mellon Trust
Company, N.A.
Reg. Agent: CT Corporation System
1201 Peachtree Street, NE
Atlanta, GA 30361

Jeffrey K. Kerr – Chapter 7 Trustee
241 West Wieuca Road, NE
Suite 130
Atlanta, GA 30342-3300

JP Morgan Chase Bank, N.A.
c/o Aldridge Connors, LLP
Attn: Matthew J. Dyer
Fifteen Piedmont Center
3575 Piedmont Road, N.E., Suite 500
Atlanta, GA 30305

JP Morgan Chase Bank, N.A.
Reg. Agent: CT Corporation System
1201 Peachtree Street NE
Atlanta, GA 30361

JP Morgan Chase Bank, N.A.
James L. Dimon, CEO
270 Park Avenue
New York, NY 10017

Chase Home Finance, LLC
Glenn J. Mouridy, President and CFO
343 Thornall Street, Suite 7
Edison, NJ 08837

The Bank of New York Mellon, N.A.
AAO BNY Mellon, N.A.
Reg. Agent: CT Corporation System
1201 Peachtree Street, NE
Atlanta, GA 30361

BNY Mellon, N.A.
Gerald Hassell, CEO
500 Grant St.
Room 3210
Pittsburgh, PA 15258

Chase Home Finance, LLC
Corporate Response Center
3415 Vision Drive
Columbus, OH 43219-6009

Chase Home Finance, LLC
Glenn J. Mouridy, President and CFO
1001 Fannin Street
Houston, Texas 77002

Chase Home Finance, LLC
Reg. Agent: The Corporation Trust
Company
Corporation Trust Center
1209 Orange Street
Wilmington, DE 19801